IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 21077 of 2006(H)

PETITIONER:

V.S.VINOD, LOWER DIVISION CLERK,
(UNDER ORDERS OF TERMINATION /REMOVAL FROM SERVICE), DISTRICT TOWN PLANNING OFFICE, THIRUVANANTHAPURAM, NOW RESIDING AT V.S.HOUSE, PALACE NAGAR-110, KAZHAKKOOTTAM.

BY ADV. SRI.KRB.KAIMAL
SRI.ANIL K.NAIR
SRI.B.UNNIKRISHNA KAIMAL
SRI.V.MADHUSUDHANAN

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIATE, THIURVANANTHAPURAM.**

2. **THE CHIEF TOWN PLANNER, THIRUVANANTHAPURAM.**

3. **THE DISTRICT TOWN PLANNING OFFICER, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

tss

WP.(C) NO.21077/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER NO.A2-4605/05 DT. 16.4.05 ISSUED BY THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE CHARGE SHEET IN CRIME NO 75/02 OF KAZHAKKOOTTAM POLICE STATION, FILED BEFORE THE JUDICIAL IST CLASS MAGISTRATE COURT-III, THIRUVANANTHAPURAM.

EXT.P3:- COPY OF THE ORDER NO.A2-4605/05/R.DIS DT. 17.7.06 ISSUED BY THE 2ND RESPONDENT.

/TRUE COPY/

P.S. TO JUDGE

tss

V.GIRI, J.

W.P.(C).No.21077 of 2006 H

Dated this the 25th day of September, 2007.

JUDGMENT

The petitioner applied for compassionate appointment as a Clerk. By Ext.P1 order he was appointed as a Lower Division Clerk in the Town Planning Department. He joined duty on 20.04.2005. According to him, at the time of joining duty, he was asked by the 3rd respondent to fill up and submit a proforma for verification of his character and antecedents. The petitioner was accused No.5 in Crime No.75/02 of the Kazhakkoottam Police Station, which ultimately came to be charge sheeted against the petitioner and others, for offences under Sections 143, 147, 148, 149, 307 and 302 of the Indian Penal Code. It is seen from Ext.P2 that the petitioner, who was arrested on 26.3.2003, was produced before the court and was remanded to judicial custody. Obviously, these facts were in the knowledge of the petitioner when he was required to fill up the proforma giving necessary particulars required for verification of his character and antecedents. According to the petitioner, he secured the help of another employee of the 3rd respondent's office. The crucial aspects regarding Ext.P2 that the

petitioner is accused No.5 therein is admittedly not disclosed in the proforma filled up by the petitioner.

2. Later, on verification of the petitioner's character and antecedents, it came to light that he was not only an accused in a Sessions Case, but he had deliberately refrained from disclosing the details in the proforma submitted by him for verification of his character and antecedents of the employee. This was taken note of and ultimately Ext.P3 order was passed on 17.7.2006 terminating the services of the petitioner. It is Ext.P3 which has been challenged in the writ petition.

3. A counter affidavit has been filed on behalf of the first respondent. It is pointed out that the petitioner was arrested on 26.3.2003 in connection with Ext.P2 crime. The same is now pending trial before the Sessions Court. But, as per the report of the Superintendent of Police, the petitioner, after arrest and production in court on 26.3.2003, was enlarged on bail. There is no reason why the petitioner should not have disclosed that fact and there was a deliberate suppression. It is a reflection of the petitioner's character and antecedents. Therefore, the order of termination is justified.

4. Learned counsel for the petitioner Mr.Unnikrishna Kaimal contended that Ext.P3 order is essentially bad for the reason that it was issued without notice to the petitioner. In this regard, Mr.Nandakumar, learned Senior Government Pleader, points out the proviso to Rule 10(b) (iii) which reads as follows:

> **"(b) No person shall be eligible for appointment to any service by direct recruitment, unless --**
>
> **(i) xxx xxx xxx**
>
> **(ii) xxx xxx xxx**
>
> **(iii) the State Government are satisfied that his character and antecedents are such as to qualify him for such service."**

5. The appointment effected under Ext.P1 order is obviously prior to the verification of the character and antecedents of the petitioner and therefore, if on such verification it is found that the petitioner is not suitable to be appointed, it is always open to the department to dispense with his services. No doubt, if on verification, further elucidation is necessary, then the Government can issue notice to the person. In the present case, the absence of notice really does not vitiate Ext.P3 order. Firstly, it is not the petitioner's case that he was not an accused in Ext.P2, nor is the petitioner's case that he actually had no

knowledge that he was accused at all at the time of joining duty. What seems to be more important from the point of view of the Government is that, in spite of the knowledge that he is an accused involving an offence under Section 302 of the Indian Penal Code, the petitioner had deliberately refrained from disclosing those facts to the appointing authority. Once these facts are clear and no further elucidation is required, really, it is not a case where notice to the petitioner should have been issued in the instant situation. I am satisfied that Ext.P3 does not suffer from any infirmity or impropriety warranting interference under Article 226 of the Constitution.

In the circumstances, the writ petition is dismissed.

Sd/-

(V.GIRI)

JUDGE

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